

AMENDED IN SENATE JULY 7, 2005  
AMENDED IN ASSEMBLY MARCH 30, 2005  
CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

No. 220

**Introduced by Committee on Public Safety (Leno (Chair), Cohn,  
Dymally, Goldberg, Ruskin, and Spitzer)**

February 3, 2005

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An act to amend Sections 4801, 5075.5, and 13823.9 of the Penal Code, to amend Section 3030 of the Family Code, and to amend Section 340.3 of the Code of Civil Procedure, relating to domestic violence.

### LEGISLATIVE COUNSEL'S DIGEST

AB 220, as amended, Committee on Public Safety. Domestic violence.

Existing law permits the Board of Prison Terms, at parole hearings, to consider evidence that a prisoner suffered from battered-~~woman~~ *women's* syndrome at the time the crime was committed.

This bill would change the reference from "battered-~~woman~~ *women's* syndrome" to "intimate partner battering."

Existing law provides that commissioners and deputy commissioners who conduct parole hearings must be trained in domestic violence and battered-~~woman~~ *women's* syndrome.

This bill would change the reference from "battered-~~woman~~ *women's* syndrome" to "intimate partner battering."

Existing law directs that health care providers be trained in the dynamics of victimization, including battered-~~woman~~ *women's* syndrome.

This bill would change the reference to intimate partner battering.

Existing law provides that a court may consider expert testimony about battered-~~woman~~ *women's* syndrome when considering whether or not to grant custody to a parent who has been convicted of murdering the other parent of the child who is the subject of the order.

This bill would change the reference from “battered-~~womans~~ *women's* syndrome” to “intimate partner battering.”

Existing law precludes a civil action against a defendant based upon a conviction for murder or attempted murder if the defendant presented substantial evidence at trial that he or she was the victim of battered-~~woman~~ *women's* syndrome, or if the defendant's parole was granted due to evidence of battered-~~woman~~ *women's* syndrome that was presented to the Board of Prison Terms.

This bill would change the reference from “battered-~~womans~~ *women's* syndrome” to “intimate partner battering.”

*The bill would incorporate additional changes to Section 3030 of the Family Code made by this bill and SB 594 to take effect if both bills are chaptered and this bill is chaptered last.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 340.3 of the Code of Civil Procedure is  
2     amended to read:

3     340.3. (a) Unless a longer period is prescribed for a specific  
4     action, in any action for damages against a defendant based upon  
5     the defendant's commission of a felony offense for which the  
6     defendant has been convicted, the time for commencement of the  
7     action shall be within one year after judgment is pronounced.

8     (b) (1) Notwithstanding subdivision (a), an action for  
9     damages against a defendant based upon the defendant's  
10    commission of a felony offense for which the defendant has been  
11    convicted may be commenced within 10 years of the date on  
12    which the defendant is discharged from parole if the conviction  
13    was for any offense specified in paragraph (1), except voluntary  
14    manslaughter, (2), (3), (4), (5), (6), (7), (9), (16), (17), (20), (22),  
15    (25), (34), or (35) of subdivision (c) of Section 1192.7 of the  
16    Penal Code.

17    (2) No civil action may be commenced pursuant to paragraph  
18    (1) if any of the following applies:

1 (A) The defendant has received either a certificate of  
2 rehabilitation as provided in Chapter 3.5 (commencing with  
3 Section 4852.01) of Title 6 of Part 3 of the Penal Code or a  
4 pardon as provided in Chapter 1 (commencing with Section  
5 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of  
6 Part 3 of the Penal Code.

7 (B) Following a conviction for murder or attempted murder,  
8 the defendant has been paroled based in whole or in part upon  
9 evidence presented to the Board of Prison Terms that the  
10 defendant committed the crime because he or she was the victim  
11 of ~~battered women's syndrome~~ *intimate partner battering*.

12 (C) The defendant was convicted of murder or attempted  
13 murder in the second degree in a trial at which substantial  
14 evidence was presented that the person committed the crime  
15 because he or she was a victim of ~~battered women's syndrome~~  
16 *intimate partner battering*.

17 (c) If the sentence or judgment is stayed, the time for the  
18 commencement of the action shall be tolled until the stay is  
19 lifted. For purposes of this section, a judgment is not stayed if the  
20 judgment is appealed or the defendant is placed on probation.

21 (d) (1) Subdivision (b) shall apply to any action commenced  
22 before, on, or after the effective date of this section, including  
23 any action otherwise barred by a limitation of time in effect prior  
24 to the effective date of this section, thereby reviving those causes  
25 of action that had lapsed or expired under the law in effect prior  
26 to the effective date of this section.

27 (2) Paragraph (1) does not apply to either of the following:

28 (A) Any claim that has been litigated to finality on the merits  
29 in any court of competent jurisdiction prior to January 1, 2003.  
30 For purposes of this section, termination of a prior action on the  
31 basis of the statute of limitations does not constitute a claim that  
32 has been litigated to finality on the merits.

33 (B) Any written, compromised settlement agreement that has  
34 been entered into between a plaintiff and a defendant if the  
35 plaintiff was represented by an attorney who was admitted to  
36 practice law in this state at the time of the settlement, and the  
37 plaintiff signed the agreement.

38 (e) Any restitution paid by the defendant to the victim shall be  
39 credited against any judgment, award, or settlement obtained  
40 pursuant to this section. Any judgment, award, or settlement

1 obtained pursuant to an action under this section shall be subject  
2 to the provisions of Section 13966.01 of the Government Code.

3 *SEC. 2. Section 3030 of the Family Code is amended to read:*

4 3030. (a) No person shall be granted physical or legal  
5 custody of, or unsupervised visitation with, a child if the person  
6 is required to be registered as a sex offender under Section 290 of  
7 the Penal Code where the victim was a minor, or if the person  
8 has been convicted under Section 273a, 273d, or 647.6 of the  
9 Penal Code, unless the court finds that there is no significant risk  
10 to the child and states its reasons in writing or on the record.

11 (b) No person shall be granted custody of, or visitation with, a  
12 child if the person has been convicted under Section 261 of the  
13 Penal Code and the child was conceived as a result of that  
14 violation.

15 (c) No person shall be granted custody of, or unsupervised  
16 visitation with, a child if the person has been convicted of murder  
17 in the first degree, as defined in Section 189 of the Penal Code,  
18 and the victim of the murder was the other parent of the child  
19 who is the subject of the order, unless the court finds that there is  
20 no risk to the child's health, safety, and welfare, and states the  
21 reasons for its finding in writing or on the record. In making its  
22 finding, the court may consider, among other things, the  
23 following:

24 (1) The wishes of the child, if the child is of sufficient age and  
25 capacity to reason so as to form an intelligent preference.

26 (2) Credible evidence that the convicted parent was a victim of  
27 abuse, as defined in Section 6203, committed by the deceased  
28 parent. That evidence may include, but is not limited to, written  
29 reports by law enforcement agencies, child protective services or  
30 other social welfare agencies, courts, medical facilities, or other  
31 public agencies or private nonprofit organizations providing  
32 services to victims of domestic abuse.

33 (3) Testimony of an expert witness, qualified under Section  
34 1107 of the Evidence Code, that the convicted parent ~~suffers~~  
35 ~~from the effects of battered women's syndrome~~ *experiences*  
36 *intimate partner battering*.

37 Unless and until a custody or visitation order is issued pursuant  
38 to this subdivision, no person shall permit or cause the child to  
39 visit or remain in the custody of the convicted parent without the  
40 consent of the child's custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of the Family Code and Division 17 (commencing with Section 17000) of this code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

*SEC. 2.5. Section 3030 of the Family Code is amended to read:*

3030. (a) (1) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(2) *No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if anyone residing in the person's household is required, as a result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code, unless the court finds there is no significant risk to the child and states its reasons in writing or on the record.*

(3) *The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code, shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the party seeking custody or visitation is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code.*

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the

1 Penal Code and the child was conceived as a result of that  
2 violation.

3 (c) No person shall be granted custody of, or unsupervised  
4 visitation with, a child if the person has been convicted of murder  
5 in the first degree, as defined in Section 189 of the Penal Code,  
6 and the victim of the murder was the other parent of the child  
7 who is the subject of the order, unless the court finds that there is  
8 no risk to the child's health, safety, and welfare, and states the  
9 reasons for its finding in writing or on the record. In making its  
10 finding, the court may consider, among other things, the  
11 following:

12 (1) The wishes of the child, if the child is of sufficient age and  
13 capacity to reason so as to form an intelligent preference.

14 (2) Credible evidence that the convicted parent was a victim of  
15 abuse, as defined in Section 6203, committed by the deceased  
16 parent. That evidence may include, but is not limited to, written  
17 reports by law enforcement agencies, child protective services or  
18 other social welfare agencies, courts, medical facilities, or other  
19 public agencies or private nonprofit organizations providing  
20 services to victims of domestic abuse.

21 (3) Testimony of an expert witness, qualified under Section  
22 1107 of the Evidence Code, that the convicted parent ~~suffers~~  
23 ~~from the effects of battered women's syndrome~~ *experiences*  
24 *intimate partner battering*.

25 Unless and until a custody or visitation order is issued pursuant  
26 to this subdivision, no person shall permit or cause the child to  
27 visit or remain in the custody of the convicted parent without the  
28 consent of the child's custodian or legal guardian.

29 (d) The court may order child support that is to be paid by a  
30 person subject to subdivision (a), (b), or (c) to be paid through  
31 the local child support agency, as authorized by Section 4573 of  
32 the Family Code and Division 17 (commencing with Section  
33 17000) of this code.

34 (e) The court shall not disclose, or cause to be disclosed, the  
35 custodial parent's place of residence, place of employment, or the  
36 child's school, unless the court finds that the disclosure would be  
37 in the best interest of the child.

38 **SECTION 1.—**

39 *SEC. 3.* Section 4801 of the Penal Code is amended to read:

1     4801. (a) The Board of Prison Terms may report to the  
2 Governor, from time to time, the names of any and all persons  
3 imprisoned in any state prison who, in its judgment, ought to  
4 have a commutation of sentence or be pardoned and set at liberty  
5 on account of good conduct, or unusual term of sentence, or any  
6 other cause, including evidence of intimate partner battering and  
7 its effects. For purposes of this section, “intimate partner  
8 battering and its effects” may include evidence of the nature and  
9 effects of physical, emotional, or mental abuse upon the beliefs,  
10 perceptions, or behavior of victims of domestic violence where it  
11 appears the criminal behavior was the result of that victimization.

12     (b) The Board of Prison Terms, in reviewing a prisoner’s  
13 suitability for parole pursuant to Section 3041.5, shall consider  
14 any information or evidence that, at the time of the commission  
15 of the crime, the prisoner had experienced intimate partner  
16 battering, but was convicted of the offense prior to the enactment  
17 of Section 1107 of the Evidence Code by Chapter 812 of the  
18 Statutes of 1991. The board shall state on the record the  
19 information or evidence that it considered pursuant to this  
20 subdivision, and the reasons for the parole decision. The board  
21 shall annually report to the Legislature and the Governor on the  
22 cases the board considered pursuant to this subdivision during the  
23 previous year, including the board’s decision and the findings of  
24 its investigations of these cases.

25     ~~SEC. 2.—~~

26     ~~SEC. 4.~~ Section 5075.5 of the Penal Code is amended to read:

27     5075.5. All commissioners and deputy commissioners who  
28 conduct hearings for the purpose of considering the parole  
29 suitability of prisoners or the setting of a parole release date for  
30 prisoners, shall receive initial training on domestic violence cases  
31 and intimate partner battering and its effects.

32     ~~SEC. 3.—~~

33     ~~SEC. 5.~~ Section 13823.93 of the Penal Code is amended to  
34 read:

35     13823.93. (a) For purposes of this section, the following  
36 definitions apply:

37     (1) “Medical personnel” includes physicians, nurse  
38 practitioners, physician assistants, nurses, and other health care  
39 providers, as appropriate.

1 (2) To “perform a medical evidentiary examination” means to  
2 evaluate, collect, preserve, and document evidence, interpret  
3 findings, and document examination results.

4 (b) To ensure the delivery of standardized curriculum,  
5 essential for consistent examination procedures throughout the  
6 state, one hospital-based training center shall be established  
7 through a competitive bidding process, to train medical personnel  
8 on how to perform medical evidentiary examinations for victims  
9 of child abuse or neglect, sexual assault, domestic violence, elder  
10 abuse, and abuse or assault perpetrated against persons with  
11 disabilities. The center also shall provide training for  
12 investigative and court personnel involved in dependency and  
13 criminal proceedings, on how to interpret the findings of medical  
14 evidentiary examinations.

15 The training provided by the training center shall be made  
16 available to medical personnel, law enforcement, and the courts  
17 throughout the state.

18 (c) The training center shall meet all of the following criteria:

19 (1) Recognized expertise and experience in providing medical  
20 evidentiary examinations for victims of child abuse or neglect,  
21 sexual assault, domestic violence, elder abuse, and abuse or  
22 assault perpetrated against persons with disabilities.

23 (2) Recognized expertise and experience implementing the  
24 protocol established pursuant to Section 13823.5.

25 (3) History of providing training, including, but not limited to,  
26 the clinical supervision of trainees and the evaluation of clinical  
27 competency.

28 (4) Recognized expertise and experience in the use of  
29 advanced medical technology and training in the evaluation of  
30 victims of child abuse or neglect, sexual assault, domestic  
31 violence, elder abuse, and abuse or assault perpetrated against  
32 persons with disabilities.

33 (5) Significant history in working with professionals in the  
34 field of criminalistics.

35 (6) Established relationships with local crime laboratories,  
36 clinical laboratories, law enforcement agencies, district  
37 attorneys’ offices, child protective services, victim advocacy  
38 programs, and federal investigative agencies.

39 (7) The capacity for developing a telecommunication network  
40 between primary, secondary, and tertiary medical providers.



1 (8) History of leadership in working collaboratively with  
2 medical forensic experts, criminal justice experts, investigative  
3 social worker experts, state criminal justice, social services,  
4 health and mental health agencies, and statewide professional  
5 associations representing the various disciplines, especially those  
6 specified in paragraph (6) of subdivision (d).

7 (9) History of leadership in working collaboratively with state  
8 and local victim advocacy organizations, especially those  
9 addressing sexual assault and domestic violence.

10 (10) History and experience in the development and delivery  
11 of standardized curriculum for forensic medical experts, criminal  
12 justice professionals, and investigative social workers.

13 (11) History of research, particularly involving databases, in  
14 the area of child physical and sexual abuse, sexual assault, elder  
15 abuse, or domestic violence.

16 (d) The training center shall do all of the following:

17 (1) Develop and implement a standardized training program  
18 for medical personnel that has been reviewed and approved by a  
19 multidisciplinary peer review committee.

20 (2) Develop a telecommunication system network between the  
21 training center and other areas of the state, including rural and  
22 mid-sized counties. This service shall provide case consultation  
23 to medical personnel, law enforcement, and the courts and  
24 provide continuing medical education.

25 (3) Provide ongoing basic, advanced, and specialized training  
26 programs.

27 (4) Develop guidelines for the reporting and management of  
28 child physical abuse and neglect, domestic violence, and elder  
29 abuse.

30 (5) Develop guidelines for evaluating the results of training for  
31 the medical personnel performing examinations.

32 (6) Provide standardized training for law enforcement officers,  
33 district attorneys, public defenders, investigative social workers,  
34 and judges on medical evidentiary examination procedures and  
35 the interpretation of findings. This training shall be developed  
36 and implemented in collaboration with the Peace Officer  
37 Standards and Training Program, the California District  
38 Attorney's Association, the California Peace Officers  
39 Association, the California Police Chiefs Association, the  
40 California State Sheriffs Association, the California Association

1 of Crime Laboratory Directors, the California Sexual Assault  
2 Investigators Association, the California Alliance Against  
3 Domestic Violence, the Statewide California Coalition for  
4 Battered Women, the Family Violence Prevention Fund, child  
5 victim advocacy organizations, the California Welfare Directors  
6 Association, the California Coalition Against Sexual Assault, the  
7 Department of Justice, the agency or agencies designated by the  
8 Director of Finance pursuant to Section 13820, the Child Welfare  
9 Training Program, and the University of California extension  
10 programs.

11 (7) Promote an interdisciplinary approach in the assessment  
12 and management of child abuse and neglect, sexual assault, elder  
13 abuse, domestic violence, and abuse or assault against persons  
14 with disabilities.

15 (8) Provide training in the dynamics of victimization,  
16 including, but not limited to, rape trauma syndrome, intimate  
17 partner battering and its effects, the effects of child abuse and  
18 neglect, and the various aspects of elder abuse. This training shall  
19 be provided by individuals who are recognized as experts within  
20 their respective disciplines.

21 (e) Nothing in this section shall be construed to change the  
22 scope of practice for any health care provider, as defined in other  
23 provisions of law.

24 *SEC. 6. Section 2.5 of this bill incorporates amendments to*  
25 *Section 3030 of the Family Code proposed by both this bill and*  
26 *SB 594. It shall only become operative if (1) both bills are*  
27 *enacted and become effective on or before January 1, 2006, (2)*  
28 *each bill amends Section 3030 of the Family Code, and (3) this*  
29 *bill is enacted after SB 594, in which case Section 2 of this bill*  
30 *shall not become operative.*

31 ~~SEC. 4. Section 3030 of the Family Code is amended to read:~~  
32 ~~3030. (a) No person shall be granted physical or legal~~  
33 ~~custody of, or unsupervised visitation with, a child if the person~~  
34 ~~is required to be registered as a sex offender under Section 290 of~~  
35 ~~the Penal Code where the victim was a minor, or if the person~~  
36 ~~has been convicted under Section 273a, 273d, or 647.6 of the~~  
37 ~~Penal Code, unless the court finds that there is no significant risk~~  
38 ~~to the child and states its reasons in writing or on the record.~~

39 ~~(b) No person shall be granted custody of, or visitation with, a~~  
40 ~~child if the person has been convicted under Section 261 of the~~

~~Penal Code and the child was conceived as a result of that violation.~~

~~(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:~~

~~(1) The wishes of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.~~

~~(2) Credible evidence that the convicted parent was a victim of abuse, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.~~

~~(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent experiences intimate partner battering.~~

~~Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.~~

~~(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of the Family Code and Division 17 (commencing with Section 17000) of this code.~~

~~(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.~~

~~SEC. 5. Section 340.3 of the Code of Civil Procedure is amended to read:~~

~~340.3. (a) Unless a longer period is prescribed for a specific action, in any action for damages against a defendant based upon~~

1 the defendant's commission of a felony offense for which the  
2 defendant has been convicted, the time for commencement of the  
3 action shall be within one year after judgment is pronounced.

4 (b) (1) Notwithstanding subdivision (a), an action for  
5 damages against a defendant based upon the defendant's  
6 commission of a felony offense for which the defendant has been  
7 convicted may be commenced within 10 years of the date on  
8 which the defendant is discharged from parole if the conviction  
9 was for any offense specified in paragraph (1), except voluntary  
10 manslaughter, (2), (3), (4), (5), (6), (7), (9), (16), (17), (20), (22),  
11 (25), (34), or (35) of subdivision (c) of Section 1192.7 of the  
12 Penal Code.

13 (2) No civil action may be commenced pursuant to paragraph  
14 (1) if any of the following applies:

15 (A) The defendant has received either a certificate of  
16 rehabilitation as provided in Chapter 3.5 (commencing with  
17 Section 4852.01) of Title 6 of Part 3 of the Penal Code or a  
18 pardon as provided in Chapter 1 (commencing with Section  
19 4800) or Chapter 3 (commencing with Section 4850) of Title 6 of  
20 Part 3 of the Penal Code.

21 (B) Following a conviction for murder or attempted murder,  
22 the defendant has been paroled based in whole or in part upon  
23 evidence presented to the Board of Prison Terms that the  
24 defendant committed the crime because he or she was the victim  
25 of intimate partner battering.

26 (C) The defendant was convicted of murder or attempted  
27 murder in the second degree in a trial at which substantial  
28 evidence was presented that the person committed the crime  
29 because he or she was a victim of intimate partner battering.

30 (e) If the sentence or judgment is stayed, the time for the  
31 commencement of the action shall be tolled until the stay is  
32 lifted. For purposes of this section, a judgment is not stayed if the  
33 judgment is appealed or the defendant is placed on probation.

34 (d) (1) Subdivision (b) shall apply to any action commenced  
35 before, on, or after the effective date of this section, including  
36 any action otherwise barred by a limitation of time in effect prior  
37 to the effective date of this section, thereby reviving those causes  
38 of action that had lapsed or expired under the law in effect prior  
39 to the effective date of this section.

40 (2) Paragraph (1) does not apply to either of the following:

1     ~~(A) Any claim that has been litigated to finality on the merits~~  
2     ~~in any court of competent jurisdiction prior to January 1, 2003.~~  
3     ~~For purposes of this section, termination of a prior action on the~~  
4     ~~basis of the statute of limitations does not constitute a claim that~~  
5     ~~has been litigated to finality on the merits.~~

6     ~~(B) Any written, compromised settlement agreement that has~~  
7     ~~been entered into between a plaintiff and a defendant if the~~  
8     ~~plaintiff was represented by an attorney who was admitted to~~  
9     ~~practice law in this state at the time of the settlement, and the~~  
10    ~~plaintiff signed the agreement.~~

11    ~~(c) Any restitution paid by the defendant to the victim shall be~~  
12    ~~credited against any judgment, award, or settlement obtained~~  
13    ~~pursuant to this section. Any judgment, award, or settlement~~  
14    ~~obtained pursuant to an action under this section shall be subject~~  
15    ~~to the provisions of Section 13966.01 of the Government Code.~~